Decision 05-07-047 July 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan (U 39 E).	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

ORDER MODIFYING DECISION (D.) 05-06-060 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. SUMMARY

In this Decision, we dispose of an application for rehearing of Decision (D.) 05-06-060 filed jointly by Southern California Edison Company, The Utility Reform Network, the Office of Ratepayer Advocates and the California Large Energy Consumers Association (jointly, "Joint Applicants"). We have carefully considered the allegations raised by Joint Applicants and are of the opinion that no grounds for granting rehearing have been demonstrated. However, we modify D.05-06-060 to correct a factual error. Rehearing of D.05-06-060, as modified, is denied.

II. BACKGROUND

On December 2, 2004, we voted out Decision (D.) 04-12-014, which adopted a permanent methodology for allocating the Department of Water Resources' ("DWR") annual revenue requirement determination between Pacific Gas and Electric Company

("PG&E"), Southern California Edison Company ("Edison") and San Diego Gas & Electric Company ("SDG&E"). The adopted methodology allocates DWR's contract costs on a cost-follows contract basis, with an adjustment so that the above-market costs of these contracts are shared equally by all ratepayers (herein referred to as the "above market cost allocation methodology").

On January 11, 2005, SDG&E filed a petition for modification ("Petition") of D.04-12-014.[1] The Petition alleged that the above-market cost allocation methodology adopted in D.04-12-014 was: (1) unfair to SDG&E ratepayers; (2) based on a flawed forecast of above-market costs; and (3) not subject to adequate evidentiary review. (Pet. for Mod., pp. 5-24.) Consequently, SDG&E requested that the Commission modify D.04-12-014 to adopt the "fixed percentage allocation methodology" originally proposed in the Alternate Decision of President Peevey. (Pet. for Mod., p. 5.)

On June 30, 2005, we adopted D.05-06-060 ("Decision"), the subject of the instant application for rehearing. The Decision grants in part SDG&E's Petition by modifying the methodology for allocating DWR's annual revenue requirement to the fixed percentage allocation methodology. This methodology allocates the avoidable (i.e., variable) costs of the DWR contracts on a costs follows contract basis, as ordered in D.02-09-053. (D.05-06-060, p. 17.) The unavoidable (i.e., fixed) costs of the DWR contracts are allocated on a fixed percentage basis as follows: 13.3% to SDG&E, 42.2% to PG&E, and 47.5% to Edison. (D.05-06-060, p. 16.)

On July 11, 2005, Edison, The Utility Reform Network, the Office of Ratepayer Advocates and the California Large Energy Consumers Association (jointly, "Joint Applicants") timely filed an application for rehearing of the Decision. On July 15, 2005, SDG&E filed a response opposing the rehearing application.

---

[1] SDG&E had also filed an application for rehearing of D.04-12-014 on December 20, 2004. On January 13, 2005, we granted limited rehearing of D.04-12-014 in D.05-01-036 on the grounds that SDG&E had demonstrated that the use of a fixed forecast of above-market costs is not supported by the evidentiary record. D.05-01-036 specifically noted that it was not disposing of, or prejudging, SDG&E's petition for modification. (D.05-01-036, p. 2, fn. 2 (slip op.).)

III. DISCUSSION

A. The Decision properly modifies D.04-12-014 in response to SDG&E's Petition for Modification.

Joint Applicants raise various arguments why the Commission erred in granting SDG&E's Petition. First, they assert that the Commission has previously held that it will only modify a prior decision under certain conditions and that none of these conditions were present or alleged to warrant modification of D.04-12-014. (Rhg. App., pp. 3-4). As support for their assertions, Joint Applicants cite to *Re United Parcel Services, Inc.* [D.97-04-049] (1997) 71 Cal.P.U.C.2d 714, 719-20; *Application of PG&E* [D.92058] (1980) 4 Cal.P.U.C.2d 139, 149-50; and *Golconda Utilities Company* [D.74141] (1968) 68 Cal.P.U.C. 296, 305. (Rhg. App., p. 4.) This reliance is misplaced.

Joint Applicants cite to these decisions for the proposition that the Commission is limited in its ability to modify a prior decision, and thus, is prevented from granting SDG&E's Petition. They are wrong. Public Utilities Code Section 1708 provides: "The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it."[2] As part of our implementation of Section 1708, we adopted Rule 47 of the Commission's Rules of Practice and Procedure. Rule 47 governs modification of a Commission decision in response to a Petition for Modification. Pursuant to Rule 47(b), "[a] petition for modification must concisely state the justification for the requested relief . . .." (Code of Regs, tit. 20, §47, subd. (b).) The Rule does not limit the reasons for granting a petition for modification to the conditions alleged by Joint Applicants in their application for rehearing. In its Petition, SDG&E stated the reasons why it believed D.04-12-014 should be modified and requested that it be modified to adopt the fixed percentage allocation methodology. As a result of our reconsideration of the policy grounds on which we adopted D.04-12-014, we granted the

[2] Unless otherwise stated, all statutory references are to the Public Utilities Code.

Petition and made the requested modification. Accordingly, our modification of D.04-12-014 complied with Rule 47.

Joint Applicants also assert that SDG&E failed to meet the requirements of Rule 47(b), as it failed to "allege new or changed facts . . . to warrant changing a final decision." (Rhg. App., p. 4.) However, Rule 47(b) states that "factual allegations must be must be supported with specific citations to the record in the proceeding. . .. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit." (Code of Regs., tit. 20, §47, sub. (b).) Thus, there is no requirement for new or changed facts before a petition for modification may be granted. In its Petition, SDG&E specifically cited to the record when it made its factual allegations and stated the reasons why it believed D.04-12-014 should be modified. Thus, its Petition met the requirements of Rule 47(b) and our decision to grant the Petition was lawful.

Joint Applicants further contend that that the record does not support the Decision's findings that the allocation methodology in D.04-12-014 created a disproportionate effect on SDG&E customers and was not equitable. (Rhg. App., p. 4.) While not completely clear, it appears that Joint Applicants are alleging that Findings of Fact Nos. 1 and 6 are not supported by record, and thus, inconsistent with the requirements in Section 1757(a) that the Commission's findings must be supported by substantial evidence in light of the whole record.[3]

Joint Applicants' evidentiary arguments are without merit. Exhibit 04-COMP BILL illustrates the potential impact of the different allocation methodologies on various classes of customers in PG&E, Edison and SDG&E territories. Based on our consideration of this exhibit, we reasonably concluded that the above-market cost allocation methodology adopted in D.04-12-014 created a disproportionate rate effect on

[3] Finding of Fact No. 1 states: "The allocation methodology ordered in D04-12-014 creates a disproportionate rate effect on SDG&E ratepayers."

Finding of Fact No. 6 states: "The Proposed Settlement's and D.04-12-014's use of historical forecasts of the net short positions of the three utilities as a basis for future cost allocation is too uncertain to be found equitable."

SDG&E customers.[4] Accordingly, Finding of Fact No. 1 is supported by the evidentiary record.

With respect to Finding of Fact No. 6, we agree that the record does not support a finding that D.04-12-014 was inequitable as a result of using historical forecasts of the net short positions for allocating future costs. However, this is because D.04-12-014 had never used net short positions of the three utilities as the basis for its cost allocation. Consequently, it is only natural that there is no record evidence to support such a fact. Therefore, to correct this factual error, we modify the Decision to delete the words "and D.04-12-014's" from Finding of Fact No. 6.[5]

Finally, Joint Applicants contend that allowing the Decision to stand would result in uncertainty regarding Commission decisions, as "final decisions of the Commission will be subject to being modified . . . irrespective of whether any facts or circumstances have changed." (Rhg. App., p. 5.) However, nothing in section 1708 or in Commission precedent prohibits us from reconsidering our policy determinations, so long as due process is satisfied and there is an evidentiary record to support the determinations upon reconsideration. In the instant case, parties had notice and opportunity to respond to the Petition. Additionally, parties were provided an opportunity to comment on our proposed disposition of the Petition. Record evidence supports our determinations upon reconsideration. In addition, as previously discussed, we properly modified D.04-12-014 pursuant to Rule 47. Accordingly, Joint Applicants' conclusions of the impact of our actions in this instance are simply incorrect.

[4] Pursuant to section 1757(a)(4), Commission decisions must be "supported by substantial evidence in light of the whole record." (Pub. Util. Code, §1757, subd. (a)(4).) If findings are based on inferences reasonably drawn from the record, an administrative order is considered to be supported by substantial evidence in light of the whole record and will not be reversed. (See, e.g., *Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 187.)

[5] Finding of Fact No. 6's statement regarding the Proposed Settlement's use of the historical net short positions, on the other hand, is amply supported by the evidentiary record. (See D.05-06-060, pp. 10-11.)

B. The Decision does not result in an unfair allocation of costs from SDG&E customers to PG&E and Edison customers.

Joint Applicants next contend that the Decision unfairly allocates costs from SDG&E customers to PG&E and Edison customers. First they maintain that the Decision is unfair because the allocation of costs occurs at different times for Edison and PG&E customers. For example, Joint Applicants point out that between 2005 and 2009, Edison customers will experience significant cost increases in DWR contract costs, while during that same period PG&E customers will experience a decrease in contract costs. However, after that period, PG&E customers will experience dramatic cost increases, even though their receipt of DWR energy would be lower. (Rhg. App., p. 6.) Joint Applicants conclude that if the Decision is not maintained after 2010, Edison customers will be "saddled" with approximately $800 additional DWR charges. (Rhg. App., p. 6.) Therefore, they assert that the allocation methodology adopted in D.04-12-014 should be reinstated, or the cost shift ordered in the Decision be levelized (Rhg. App., p. 7.)

Joint Applicants' arguments are unpersuasive. The skewed allocation results from the application of the fixed percentage methodology to the type of contracts assigned to each utility and when those contracts expire. The Decision's intentional determination to not make any adjustments for this consequence demonstrates, at best, the imprecision inherent in the "rough justice" policy adopted. However, it does not rise to the level of legal error, and thus is not grounds for granting rehearing.

Further, Joint Applicants claim that a "fair allocation" of DWR's annual revenue requirement should be based on cost causation, not rate impact. (Rhg. App., p. 8, fn. 8.) However, we expressly determined:

> "[T]he DWR contracts at issue were signed at a time of crisis, confusion, and uncertainty, rendering our traditional notions of cost causation inappropriate. In large part we are "spreading the pain" of a unique occurrence, for which our standard methods are ill-suited. Accordingly, we must find another way to reach a fair allocation."

(D.05-06-060, p. 14.) As demonstrated by the various proposed decisions we considered in issuing D.04-12-014, there were numerous ways to allocate DWR's annual revenue requirement in a "fair" manner. Our determination of which methodology we felt was most fair is a policy consideration. The fact that we decided to change this policy in response to SDG&E's Petition is not grounds for granting rehearing.

Additionally, Joint Applicants focus on the annual difference in costs between the allocation methodology adopted in D.04-12-014 and the methodology adopted in the Decision. The difference simply demonstrates that all utilities are not affected in the same manner at the same time under the two methodologies. Such a consequence is not unusual and does not constitute grounds for finding legal error. Moreover, the Decision's consideration of the fairness of the allocation methodology is based on the total allocation of costs overall, not the allocation of costs on a year by year basis. Thus, Joint Applicants' arguments are without merit.

Joint Applicants next note that SDG&E had originally claimed that its customers' rates would increase substantially as a result of D.04-12-014. However, they point out that despite these claims, SDG&E has filed an Energy Resource Recovery Account ("ERRA") application seeking approval of a rate decrease for its customers for the period between September 2005 and August 2006 at the time D.04-12-014 was in effect. Consequently, Joint Applicants conclude that SDG&E's claims were unsupported and maintain that the Decision erred by relying on these factual claims as a basis for granting the Petition. (Rhg. App., p. 8.) These arguments are equally without merit.

SDG&E's ERRA filing was the result of $38 million in refunds received from the Mirant electric generator settlement and the El Paso Natural Gas settlement that were credited to the ERRA in May, 2005. Based on SDG&E's ERRA Trigger mechanism, SDG&E was required to file a request for a rate decrease. (See *Application of San Diego Gas & Electric Company for Approval to Amortize its Energy Resource Recovery Account (ERRA) Over-Collection Through a Reduction to Electric Commodity Rates ("SDG&E ERRA Filing")*, filed June 29, 2005, p. 2; see also, *SDG&E ERRA Filing*, Deremer Testimony, p. KD-3.) This filing would likely have been required

regardless of which allocation methodology had been adopted in December, 2004. Therefore, SDG&E's ERRA filing has no relevance or relationship to the factual claims in its Petition. Furthermore, SDG&E's Petition clearly notes that its allegations are based on the information presented in Exhibit 04-COMP BILL. (Pet. for Mod., p. 7.) Thus, SDG&E's allegations were factually correct based on the record. Accordingly, Joint Applicants' attempt to use SDG&E's ERRA filing as a basis for finding legal error is unfounded.

Finally, Joint Applicants maintain that rehearing should at least be granted to consider the impact of the Decision on all customer bills. (Rhg. App., p. 9.) We disagree. Exhibit 04-COMP BILL already includes the bill impact of the fixed percentage allocation methodology adopted in the Decision on PG&E, Edison and SDG&E customers, and parties have had an opportunity to file comments on the exhibit. Moreover, the Decision's consideration of the impact of the various allocation methodologies on SDG&E customers is not based on the actual costs imposed, but rather based on the relative effect of the cost burden imposed on SDG&E customers in relation to the burdens imposed on PG&E and Edison customers.[6] (D.05-06-060, pp. 4-5.) Joint Applicants have failed to provide any persuasive arguments why additional information on the impact of the Decision on customer bills is necessary. Accordingly, we find no basis for granting rehearing.

C. The methodology for allocating unavoidable contract costs adopted in the Decision is reasonable.

Joint Applicants' final challenge is that the Decision applied "contrary and flawed logic" to allocate the unavoidable costs and, thus, is arbitrary. (Rhg. App., pp. 9-10.) This challenge is based on the fact that while the Commission rejected the "residual

[6] Indeed, the Assigned Commissioners' Ruling admitting Exhibit 04-COMP BILL into the evidentiary record specifically states: "Any and all assumptions or estimates concerning future rates contained or reflected in the comparison exhibit are to be used for the purpose of helping Commissioners to understand the impact of the proposals before them . . . ." (*Assigned Commissioners' Ruling Admitting Late Comparison Exhibit and Requesting Comments*, dated November 18, 2004, p. 3.)

calculation" allocation methodology adopted in D.02-12-045,[7] the fixed percentage allocation of fixed costs to SDG&E was derived from "fairness metrics" developed under this methodology. (Rhg. App., p. 10.) Joint Applicants' arguments are unpersuasive.

In developing the fixed percentage allocation methodology, we needed a means to determine a "fair" allocation of fixed costs. Joint Applicants' rehearing application in effect argues that since we had rejected all the methodologies proposed by parties in this proceeding, we could not now use what the parties had considered to be a fair allocation of DWR's costs. However, "the fairness metrics [recommended by parties in the proceeding] appear to provide the best avenue for developing a fair and equitable cost allocation." (D.05-06-060, p. 14.) The fact that we decided to develop our allocation percentages based on the evidentiary record can hardly be considered "arbitrary." Additionally, the Decision fully explains how the fairness metrics presented by parties were used to determine the allocation percentages. (D.05-06-060, pp. 15-16.) Moreover, the Decision's rejection of the residual calculation allocation methodology was mainly due to the application of a fixed percentage to all DWR costs. "[T]he parties are indirectly re-litigating the allocation of the avoidable costs of DWR's contracts, as the total cost approach we adopted in D02-12-045 creates a direct link between the allocation levels of the unavoidable and avoidable costs." (D.05-06-060, p. 18.) Since the fixed percentage allocation methodology only applies a fixed percentage to DWR's unavoidable contract costs, the concerns underlying our criticism of D.02-12-045 are not present. Consequently, the Decision does not apply "contrary or flawed logic" as claimed by Joint Applicants. Accordingly, there is no basis for finding that the Decision is unlawful.

THEREFORE, IT IS ORDERED that:

1. D.05-06-060 is modified to delete the words "and D.04-12-014's" from Finding of Fact No. 6.

[7] This methodology "pools the total costs of DWR's contracts and allocates those costs among the utilities on the basis of the quantity of energy supplied to each utility from the contracts." (D.02-12-045, p. 3.)

2. Rehearing of D.05-06-060, as modified, is denied.

This order is effective today.

Dated July 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners